

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO  
VILLATORO, MISAEAL ALEXANDER MARTINEZ  
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA  
MOREIRA and MATEO UMANA individually and on  
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO  
LANDSCAPING, INC., E.L.M. GENERAL  
CONSTRUCTION CORP. D/B/A KELLY'S CREW,  
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014  
(PAE)(SDA)

**DECLARATION OF ELMER AMADOR IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR  
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Elmer Amador, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.

2. I am a resident of West Babylon, New York.

3. I currently work for Kelco Construction as a Laborer. I have been working for Kelco Construction since approximately 2010.

4. As a Laborer, I mainly review the work plans and instruct workers what to do. Currently, the work in New York City I am assigned to is at Pier 97.

5. I am a union member of Local 1010.

6. I also work as a driver for ELM. In my capacity as a driver, I pick up the company

vehicle at the Hauppauge facility around 4:45 a.m. I drive the company vehicle to a park-and-ride located in Commack, New York.

7. At approximately 5:00 a.m., I pick up around three (3) to four (4) workers waiting at the Commack park-and-ride location and drive such employees to various jobsites in New York City each workday. It takes me approximately five (5) minutes to drive to the Commack park-and-ride location from the Hauppauge facility.

8. The workers I pick up from the park-and-ride location do not perform any work prior to commuting into the New York City jobsites in the company vehicle I drive.

9. On average, it takes approximately forty (40) minutes to one (1) hour to drive to the jobsites in New York City. It takes me the same amount of time to drive back to the park-and-ride location to drop off my coworkers and back to the Hauppauge Facility.

10. I typically drop off other workers at the Commack park-and-ride location between 5:30 p.m. and 6:00 p.m. each workday.

11. At the end of the workday, I occasionally prepare the company vehicle for the following day.

12. To compensate me for this time that I spend driving, ELM pays me three (3) hours of drive time at a rate of \$20.00 per hour (for a total of \$60.00 per day).

13. I work for Kelco Construction approximately eight (8) hours per day, five (5) times per week.

14. I also work for ELM approximately two (2) Saturdays per month at the Hauppauge facility.

15. My primary language is Spanish. On January 24, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in

my primary language.

16. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 24, 2023

  
\_\_\_\_\_  
Elmer Amador